

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 19 Socioeconomic Programs

Subject: 19.4 Subcontracting Plans

PURPOSE: This standard practice (SP) identifies the requirements for the use of lower-tier subcontracting plans and provides instructions for their evaluation, negotiation, and administration.

POLICY: The Laboratory will require its subcontractors to adopt plans for subcontracting with small business (SB) concerns, when applicable.

SCOPE: This SP applies to:

- Subcontracts exceeding \$500,000 or \$1 million for construction;
- Subcontracts less than the above thresholds if the value of a subsequent modification itself exceeds the threshold; and
- Subcontracts containing priced option periods if the cumulative value of the subcontract and all option periods exceeds \$500,000 or \$1 million for construction.

Exceptions A subcontracting plan is not required when:

- The offeror is a SB concern;
- There are no lower-tier subcontracting possibilities;
- The work will be performed entirely outside the United States or its possessions; or
- The subcontract is for personal services (including personal service agreements, consultant agreements, and contract-labor subcontracts).

DEFINITIONS:

Commercial Item For definition of a commercial item, see SP 2.1, *Definitions of Words and Terms - General*.

Commercial Plan A commercial plan is a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual Plan An individual plan is a subcontracting plan that covers the entire subcontract period (including option periods), applies to a Laboratory-specific subcontract, and has goals that are based on the offeror's planned subcontracting in support of the specific subcontract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the subcontract.

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Master Plan	A master plan is a subcontracting plan that contains all the required elements of an individual plan, except goals, and may be incorporated into individual plans, provided the master plan has been approved.
Small Business (SB) Concern	<p>As used herein, the term SB concern includes: small business (SB), HUBZone small business (HZSB), small disadvantaged business (SDB), service-disabled veteran-owned small business (SDVOSB), veteran-owned small business (VOSB), and women-owned small business (WOSB). (Note: 8(a) concerns are not included in the goal requirements under a Subcontracting Plan)</p> <p>See SP 19.1, <i>Socioeconomic Programs —General</i>, for definitions of the above terms.</p>
Small Business and Supplier Management Office (SB&SMO)	The Small Business and Supplier Management Office (SB&SMO) provides assistance to procurement specialists and reviews subcontracting plans for socioeconomic business participation.
Subcontracting Plan	A subcontracting plan is a negotiated agreement, incorporated into a Laboratory subcontract, defining the good-faith efforts the subcontractor will make to issue lower-tier subcontracts to SB concerns, along with dollar and percentage goals for its lower-tier subcontracts with those businesses.

PROCEDURES:

Subcontracting Plan Elements	Subcontracting plans must contain the elements, set forth in Paragraph (d) of Prime Contract Clause I.16, <i>Small Business Subcontracting Plan</i> (FAR 52.219.9)
Submission of Subcontracting Plans	<p>Subcontracting plans are normally required from only the apparent successful offeror. Proposed subcontracting plans may be required from all offerors as part of the solicitation, when necessary, except for those submitted under sealed-bid construction subcontracts.</p> <p>The apparent successful offeror must submit one of the following before award:</p> <ul style="list-style-type: none">• A copy of the offeror's proposed individual subcontracting plan, specific to the subcontract;• A copy of the master plan that contains all the necessary elements (the offeror must submit individual goals for each Laboratory subcontract); or

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- A copy of the federally approved commercial plan, provided the product being acquired is a commercial product and provided the federal agency approval is current. The approved commercial plan will remain in effect for all the offeror's commercial products purchased under the subcontract.

Letter Subcontracts

Letter subcontracts and similar undefinitized instruments that would otherwise be within the scope of this SP must contain at least a preliminary subcontracting plan addressing all the subcontracting plan elements. When a preliminary plan is used, the final plan should be negotiated within 90 days after award or before definitization of the subcontract, whichever occurs first. When an exigency prevents obtaining a preliminary plan before award, the plan must be obtained before definitization of the subcontract.

Review and Negotiation of Subcontracting Plans

Proposed subcontracting plans must be reviewed for adequacy, ensuring that the required elements, goals, and assurances are included. Before award of the subcontract, concurrence must be obtained from the SB&SMO for subcontracting plans, goals, and claims for exemption.

Subcontracting goals should be set at a level that the parties reasonably can expect to result from the offeror expending good faith efforts to use SB concerns to the maximum practicable extent.

Except for those submitted under sealed bid procedures (see below), subcontracting plans are subject to negotiation. Offerors who fail to submit and negotiate an acceptable plan within the Laboratory's time frame will result in being ineligible for award. If a proposed plan is modified during negotiations, the subcontractor must resubmit the final plan for review and approval.

Sealed-Bid Procedures— If a bidder submits a plan that does not cover each of the required elements, the bidder must be advised of the deficiency and submit a revised plan by a date specified by the Laboratory. If the bidder fails to submit a plan that incorporates the required elements within the time allotted, the bidder must be considered to be ineligible for award. If the plan as submitted provides evidence of the bidder's intention not to comply with the requirements of the *Utilization of Small Business Concerns* clause (see SP 19.1, *Socioeconomic Programs – General*), the bidder may be found to be non-responsible.

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Commercial plans and master plans should reflect approval of the cognizant government Administrative Contracting Officer (ACO). For master plans, a supplement, with goals applicable to the particular Laboratory subcontract, must be negotiated.

Federal Agency Approvals

By virtue of Federal agency approval, a commercial subcontracting plan and the administrative aspects of a master plan are accepted by the Laboratory through the expiration period stated on the approval. If the plan approval expires before subcontract performance has been completed, the subcontractor must supply proof of continued Federal agency approval.

Approvals from Federal agencies must be in a form acceptable to the Laboratory. Otherwise, the offeror and/or the approving Federal agency must furnish the required approval documentation.

Unless the subcontractor has submitted a request for Federal agency approval, individual SB concern utilization goals must be negotiated for each subcontract.

Subcontracts

Subcontracts subject to subcontracting plans must contain Prime Contract Clause I.16, *Small Business Subcontracting Plan (FAR 52.219-9)* and incorporate the negotiated subcontracting plan by reference.

The SB&SMO must be provided a copy of the final negotiated subcontracting plan upon award of the subcontract. The SB&SMO should also be notified of subsequent subcontract actions that may have impact on the subcontracting plan, including:

- The effective date;
- Any stop-work orders;
- Modifications; and
- The actual completion date.

If a subcontracting plan was not required at the time of award because of the value of the subcontract, a subcontracting plan will not be required if a subsequent modification increases the value of the subcontract above the threshold unless the value of the modification itself exceeds the thresholds covered under *Scope*, above.

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Modifications	<p>If a subcontract that originally required a subcontracting plan is modified to add new work exceeding the thresholds covered under <i>Scope</i>, above or requires a material change in the statement of work, a separate subcontracting plan must be obtained that reflects the goals specific to the modification. Goals may be modified by inclusion of separate goals or by cumulative revision to existing goals. Negotiated goals must be coordinated with the SB&SMO for concurrence.</p>
Priced Option Periods	<p>For subcontracts containing priced option periods, the cumulative value of the basic subcontract and all priced option periods must be considered when determining whether a subcontracting plan is required. If required, the plan must contain all the required elements and separate goals for the basic subcontract and each priced option period.</p>
Subcontractor Reporting Requirements	<p>Subcontractors are required to submit semi-annually on-line the Electronic Subcontracting Reporting System (eSRS) an Individual Subcontracting Report (<i>ISR</i>) and submit annually a <i>Summary Subcontracting Report (SSR)</i>, in accordance with the instructions in the eSRS or as provided in DOE regulations. <i>ISR</i> must be entered in the eSRS no later than the 20th of the month following the close of the reporting period (April 20 or October 20), and <i>SSR</i> must be entered in the eSRS no later than November 29th. If a report is not received within 15 days of its due date, the subcontractor should be notified in writing, and a copy of the notification sent to the SB&SMO.</p> <p><u>Note:</u> eSRS Individual Subcontracting Reports <i>and Summary Subcontracting Reports</i> are not required when the subcontractor has provided a Federal agency's approval of a commercial plan.</p>
Evaluating Subcontractor Performance	<p>Subcontractor reports must be reviewed against the data and goals in the subcontracting plan and corrected, when necessary. If a subcontractor fails or appears to be failing to meet its negotiated goals, the circumstances must be evaluated to determine whether any corrective action is required. The SB&SMO should be included in this evaluation process. The procurement specialist should evaluate the entire situation, not just the subcontractor's failure to meet goals. Consideration should be given to:</p> <ul style="list-style-type: none">• Availability of anticipated sources;• Reasonableness of offered prices;• Actual attempts to solicit SB concerns; and

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- Compliance with administrative aspects of the subcontracting plan.

Corrective Action

Depending upon the evaluation, it may be appropriate to renegotiate the goals. It will be considered a material breach of its subcontract if a subcontractor fails to make a good faith effort to comply with the subcontracting plan. As with earlier negotiations, coordination with the SB&SMO must occur.

RESPONSIBILITIES:

Procurement Specialist

The procurement specialist shall:

- Determine whether a subcontracting plan is required;

Include appropriate clauses and forms in solicitations and subcontracts;
- Review subcontracting plans for adequacy together with the SB&SMO;
- Keep the SB&SMO apprised of new and modified subcontracting plans;
- Obtain periodic subcontracting plan reports from subcontractors on time; and
- Evaluate subcontractor performance against the goals in the subcontracting plan with the SB&SMO.

SB&SMO

The SB&SMO shall:

- Provide support to the procurement specialist in evaluating and negotiating subcontracting plans;
- Ensure receipt of required subcontracting plan reports and review them for accuracy;
- Compile subcontracting plan reports for DOE or other government agencies; and
- Follow-up with the procurement specialist to ensure that reporting requirements and federal approvals of master or commercial plans are current.

REFERENCES:

Prime Contract Clause I.15 – Utilization of Small Business Concerns

Prime Contract Clause I.16 - Small Business Subcontracting Plan

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Prime Contract Clause I.50, Subcontracts for Commercial Items
Prime Contract Appendix H - Small Business, Veteran-Owned
Small Business, Service-Disabled Veteran-Owned Small
Business, HubZone Small Business, Small Disadvantaged
Business, and Women-Owned Small Business Model
Subcontracting Plan